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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCELLE WILLIAMS,

Defendant and Appellant.

2d Crim. No. B181625  
(Super. Ct. No. 2003030280)  
(Ventura County)

Marcelle Williams appeals from the judgment entered following his conviction by a jury of the first degree murder of Joshua Pelaya. (Pen. Code, §§ 187, subd. (a), 189.) The jury found true an allegation that appellant had personally and intentionally discharged a firearm causing death. (§ 12022.53, subd. (d).) The trial court sentenced appellant to prison for 50 years to life.

Appellant contends that the trial court erroneously admitted statements elicited from him during police interrogation in violation of *Miranda v. Arizona* (1966) 384 U.S. 436. The violation allegedly occurred because the police continued to question him after he had invoked his right to remain silent by requesting permission to telephone his grandmother. Appellant also contends that he was denied his constitutional rights to an impartial jury and to due process because the trial court refused to discharge a biased juror. We affirm.

### *Facts*

Dionisio Montanez lived with his stepson, Joshua Pelaya, in Oxnard. On February 21, 2003, upon arriving home in the afternoon after work, Montanez discovered Pelaya's dead body on the floor near the front door. The cause of death was two gunshot wounds to the back of the head.

On February 22, 2003, the police contacted appellant and took samples from his hands for a gunshot residue test. Particles of gunshot residue were found on both hands. Two days later, the police seized a pair of tennis shoes from appellant's bedroom. The right shoe had three blood stains. A DNA analysis showed that the blood on the shoe matched Pelaya's blood.

Appellant was arrested for the murder of Pelaya. After the arrest, Detectives Robert Coughlin and Jim Seitz of the Oxnard Police Department interviewed him. The interview occurred on September 4, 2003, approximately two months after appellant's eighteenth birthday. Appellant was advised of and waived his *Miranda* rights. Appellant said that, since his arrest, he had not spoken to his mother. He said that his grandmother knew he had been arrested.

At first, appellant denied being involved in the shooting of Pelaya. After the detectives informed him of the results of the gunshot residue test and the DNA analysis, appellant apologized for lying to them. Detective Coughlin asked appellant why the shooting had occurred. Appellant responded: "I was just scared, man. Let me tell you, I panicked." "I don't know who . . . pulled the trigger, but I was scared for my life." Appellant asked the detectives if they were "tryin' to get [him] life . . . ." Coughlin replied, "We're here for the truth."

Appellant said that he was alone when he went to Pelaya's house on the day of the shooting. Coughlin asked how he had managed to get inside the house. Appellant responded, "Can I call my grandma, please?" Coughlin replied, "Yeah, we'll let you call your grandma in a little bit. Let's finish what we're doin' here first. Let's finish what

we're doin'. You're takin' responsibility for, for somethin' that got out of hand. Let's finish what we got goin'." Appellant voiced no objection to Coughlin's reply.

Appellant told the detectives that he saw Pelaya by the front door and walked into the house with him. Inside the house, appellant accused Pelaya of shooting him on an earlier occasion and of trying to shoot him again. Appellant said to Pelaya, "You're not gonna do it, it's over." Appellant stood behind Pelaya, who was sitting on the arm of a couch, and shot at him three times with a revolver. After the shooting, appellant threw the revolver off the Hueneme pier.

At the end of the interrogation, appellant said to the detectives, "You guys did a good job." Appellant told them that he did not want a public defender and was "probably just gonna get a lawyer."

*Appellant Did Not Invoke His Right to Remain Silent*

Prior to trial, appellant moved to suppress the statements elicited after his request to telephone his grandmother. The trial court viewed a videotape of the interrogation and denied the motion. It rejected appellant's claim that his request constituted an invocation of his right to remain silent. The court noted that its ruling was based on "the totality of the circumstance[s]." Appellant contends that the ruling was erroneous.

"As *Miranda* itself recognized, police officers must cease questioning a suspect who exercises the right to cut off the interrogation. 'If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.' [Citation.]" (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238.) "[N]o particular form of words or conduct is necessary on the part of a suspect in order to invoke his or her right to remain silent [citation], and the suspect may invoke this right by any words or conduct reasonably inconsistent with a present willingness to discuss the case freely and completely. [Citation.]" (*People v. Crittenden* (1994) 9 Cal.4th 83, 129.)

In considering a defendant's claim that he invoked his right to remain silent, "we accept the trial court's resolution of disputed facts and inferences, and its evaluation of

credibility, if supported by substantial evidence. [Citation.] Although we independently determine whether, from the undisputed facts and those properly found by the trial court, the challenged statements were illegally obtained [citation], we ' "give great weight to the considered conclusions" of a lower court that has previously reviewed the same evidence.' [Citations.]" (*People v. Wash* (1993) 6 Cal.4th 215, 235-236.)

"There are certain words and conduct that are inconsistent per se with a present willingness to discuss one's case freely and completely with the police. Thus, a request for an attorney automatically invokes the right to have questioning cease. . . . However, no per se rule applies in the situation here, where an adult asks to talk to someone *other* than [an] attorney. In such a case, the court must look to the totality of circumstances surrounding the interrogation to determine whether the request was in fact an invocation of the privilege of silence. [Citations.]" (*People v. Soto* (1984) 157 Cal.App.3d 694, 705.) "The totality approach permits - indeed, it mandates - inquiry into all the circumstances surrounding the interrogation." (*Fare v. Michael C.* (1979) 442 U.S. 707, 725.)

We have independently reviewed the videotaped interrogation. Based on the following circumstances, we concur in the trial court's determination that appellant's request to telephone his grandmother was not an invocation of his right to remain silent:

1. Appellant never indicated that he desired to discontinue the questioning after Detective Coughlin said, "[W]e'll let you call your grandma in a little bit. Let's finish what we're doin' here first." Appellant did not object to the delay in telephoning his grandmother and did not mention her again during the remainder of the interrogation.

2. The detectives did not engage in any improper behavior. They made no promises to appellant regarding prosecution. Nor did they use coercive or deceitful tactics to pressure him into continuing the interrogation after his request to telephone his grandmother. At all times their demeanor was courteous and respectful toward appellant. They used a calm tone of voice when questioning him.

3. Although appellant was only 18 years old, he had had previous encounters with the criminal justice system. The probation report shows that several juvenile delinquency petitions had been filed against him. Appellant was sophisticated enough to distinguish between private counsel and the public defender. At the end of the interrogation, he told the detectives that he did not want a public defender and was "probably just gonna get a lawyer."

4. Appellant apparently believed that he had been fairly treated during the interrogation. When the interrogation was over, he complimented the detectives on their professionalism: "You guys did a good job."

Accordingly, based on the totality of the circumstances, we conclude that there was no *Miranda* error.

*The Trial Court Did Not Abuse Its Discretion in  
Refusing to Discharge a Juror for Bias*

Appellant contends that his "Sixth Amendment right to an impartial jury, his Fifth and Fourteenth Amendment right to due process, and his right to due process under the California Constitution were violated by the trial court's failing to discharge a juror who had indicated a bias and prejudgment of his case." After the jury was selected but before opening statement, the juror approached the bench with counsel and said "that he had a concern about the evidence as it was described for him during voir dire . . . ." The concern was "whether he could ever conceive of a case" in which someone who had shot another person "in the back of the head" could legitimately claim self-defense.

The trial court gave the parties the opportunity to question the juror outside of the presence of the other jurors. In response to questioning by the prosecutor, the juror agreed that "there is at least a theoretical case where there could be actual self-defense even though there are shots to the back of the head or to the back." The prosecutor explained to the juror the doctrine of imperfect self-defense: "[I]f a person has an honest belief in the need to defend themselves [sic] against great bodily injury or death, but that honest belief is actually unreasonable to an objective person, they would be entitled to a

conviction to a crime less than murder." The prosecutor then asked the juror, "Given all that, do you think you could be a fair juror in the case?" The juror responded, "Yes, I can." Appellant's counsel declined the trial court's invitation to question the juror.

After the juror had left the courtroom, appellant's counsel moved to discharge him. Counsel alleged that, although "to some extent [the juror] may have been rehabilitated," the juror's prior expression of concern nevertheless showed that he could not be fair and impartial. The trial court denied the motion: "[B]ased on this record there's no basis for removing [him] from the Jury."

"Section 1089 provides in part: 'If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, . . . the court may order the juror to be discharged . . . .' 'Before an appellate court will find error in failing to excuse a seated juror, the juror's inability to perform a juror's functions must be shown by the record to be a "demonstrable reality." ' " (*People v. Jablonski* (2006) 37 Cal.4th 774, 807.) "The decision whether to investigate possible juror bias . . . , as well as the ultimate decision whether to retain or discharge a juror, rests within the sound discretion of the trial court. [Citation.]" (*People v. Maury* (2003) 30 Cal.4th 342, 434.) " "The [appellate] court will not presume bias, and will uphold the trial court's exercise of discretion on whether a seated juror should be discharged for good cause under section 1089 if supported by substantial evidence. [Citation.]" [Citations.]" (*People v. Jablonski, supra*, 37 Cal.4th at p. 807.)

"The record before us does not show that the juror was unable to fulfill [his] functions as a demonstrable reality." (*People v. Jablonski, supra*, 37 Cal.4th at p. 807.) At the hearing the juror acknowledged that it was conceivable that someone who had shot another person in the back of the head could legitimately claim self-defense. After the prosecutor had explained the doctrine of imperfect self-defense, the juror assured the court that he could be fair.

Appellant complains that "[t]he hearing here was cursory at best." His complaint will not be heard on appeal because he declined the trial court's invitation to question the juror and develop a more complete record. Based on the record before it, the trial court did not abuse its discretion in denying appellant's motion to discharge the juror. Since the trial court acted within its discretion, we reject appellant's claim that the court's refusal to discharge the juror violated his constitutional rights to an impartial jury and to due process. (See *People v. Schmeck* (2005) 37 Cal.4th 240, 298; *People v. Roldan* (2005) 35 Cal.4th 646, 671.)

*Disposition*

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

James P. Cloninger, Judge  
Superior Court County of Ventura

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